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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

GRAYSON, ANGELA J

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/099,989

Applicant(s)

PARK, BOO YL

Examiner

Angela J. Grayson, Esq.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,199,213 to Whang in view of US Patent No. 462,040 to Fox .

As to claim 1, Whang discloses a baseball-style cap with a tubular sweatband with a crown main body having a plurality of panels (Figure 2); a visor portion (Figure 2 member 21); a sweatband sewn along the lower peripheral edge of said crown main body (Figure 3 member 26) but fails to disclose a sweatband made of a fabric portion woven to form a tubular channel. However Fox provides a tubular woven fabric that may be substituted for a garment of sewn seams. Garments have notoriously been constructed of flat fabric joined by seams at least to the edges to form a tubular structure. It is well recognized that trouser or pants have at least one seam to form a leg. Fox discloses that it is possible to form a garment with legs as a tubular structure void of seams. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Whang to include the tubular woven structure of Fox since using a single piece of fabric saves time in manufacture.

As to claims 4 and 5 Whang in view of Fox discloses a baseball-style cap wherein the sweatband is sewn along longitudinal edges (Figure 3 showing parallel seam lines at member 30) and wherein the sewing along the longitudinal edges includes two substantially parallel lines of stitching. However, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

3. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whang in view of US Patent No. 4,015,641 to Goff.

As to claims 2, and 3 Whang discloses a cap and sweatband but fails to disclose particularly that the sweatband is woven with spun thread or that the spun thread is a material having quick perspiration absorbency. However, Whang goes on to disclose the band may be made "of soft and smooth flexible materials such as polyester, spandex, and cotton" and that the material needs to be capable of absorbing the sweat (col. 2 lines 51-67). Although Whang does not specifically require "woven" or "spun" materials, it does disclose a manufacturer can use many of the fabrics that are readily available on the market. It follows that it is well known that sweatbands in caps are routinely comprised of such materials. Therefore, the use of woven and spun fabric to make absorbent sweatbands is well known and would have been obvious to one of ordinary skill in the art at the time the invention was made.

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4. Claims 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whang in view of US Patent No. 462,040 to Fox.

As to claim 6, Whang discloses a sweatband (Figure 1), which forms a tubular channel as in Figure 1, but fails to disclose a tubular channel where the layers are already joined, however, Fox is illustrative of such tubular wovens. Fox discloses a tubular fabric having an upper layer and a lower layer but fails to disclose the tubular fabric used as a sweatband in a cap. However, the tubular design may be adapted for an intended purpose, therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Whang which has a tubular design formed by attaching to pieces of fabric for the design of Fox which is simply comprised of one piece since using a single piece of fabric saves time in manufacture.

As to claim 7, Whang in view of Fox discloses a sweatband which is woven with spun thread. (Whang discloses the use of cotton and cotton is routinely spun into a fabric, Whang col. 3 lines 14-17).

As to claim 8, Whang in view of Fox discloses a sweatband wherein the spun thread is a material having quick perspiration absorbency. (Whang col. 3 lines 1-4).

As to claims 9 and 10, Whang in view of Fox discloses a sweatband wherein the sweatband is sewn along longitudinal edges (Figure 3 showing parallel seam lines at member 30) and wherein the sewing along the longitudinal edges includes two substantially parallel lines of stitching. However, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does

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not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent No. D452, 768; 5,920,910; 6,016,572; 6,122,774; 6,199,213; 6,363,537; 6,446,266; 5,327,585; 462,040.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela J. Grayson, Esq. whose telephone number is 703-305-1806. The examiner can normally be reached on Monday-Thursday from 9:30 am to 7:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 703-305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.

Angela J. Grayson
June 25, 2003


JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

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